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OFFICE OF PETITIONS

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In re Application of
Buckle, et al.
Application No. 09/878,748
Filed: June 11, 2001
Docket No. 8935-247001//M-4963
For: ANODE CANS FOR
ELECTROCHEMICAL CELLS

:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
:
:
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This is in response to the petition under 37 CFR 1.47(a), filed February 27, 2002 (Certificate of Mail date of February 8, 2002).

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed June 11, 2001 without an executed oath or declaration and naming Keith E. Buckle and Masaaki Ishio as joint inventors. Accordingly, on August 8, 2001, a Notice to File Missing Parts of Nonprovisional Application ("Notice") was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner lacks item (1) set forth above. Petitioner has failed to sufficiently establish that the non-signing inventor has refused to execute the declaration after having been presented with a copy of the application papers (specification, claims, and drawings).

The declaration of Christine P. Bellon indicates that on August 30, 2001, a cover letter and declaration/power of attorney were sent to the inventor at the inventor's last known address requesting that the inventor execute the declaration/power of attorney. The declaration further states that a reminder letter was sent to the inventor on September 21, 2001 and that in response, a letter on behalf of the inventor was received from M. Mitsuya, an assistant manager of sales section at Sumitomo

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Special Metals Co., Ltd., requesting that a copy of the patent application be forwarded to N. Nakajima at Sumitomo Corporation of America. Declarant states that a copy of the application was sent to N. Nakajima on October 4, 2001 and that despite numerous requests to representatives from Sumitomo, an executed declaration from the inventor has not been received.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. See, MPEP 409.03(d).

Petitioner has not demonstrated that inventor ever received a copy of the application papers (specification, claims, and drawings). Nor has petitioner established that a refusal to execute the declaration was made on behalf of the inventor by the inventor's legal representative.

Any renewed petition should be accompanied by evidence to establish that the non-signing inventor, or the non-signing inventor's legal representative, was sent a copy of the application papers (specification, claims, and drawings) and thereafter refused to execute the declaration. Petitioner should include copies of letters sent to the inventor indicating the enclosure of the application papers (specification, claims, and drawings). If after the inventor received the application papers and requests to execute the declaration were refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.

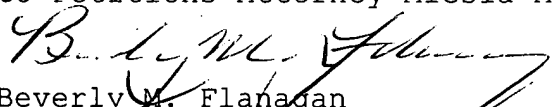
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries regarding this decision should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy